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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Jesse Fox,

10 Plaintiff,

11 v.

12 Michael Butler, et al.,

13 Defendants.
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No. CV-24-00327-TUC-CKJ (P)

ORDER

15 On September 5, 2024, the Court screened a civil rights Complaint filed by the
16 Plaintiff on July 8, 2024, and dismissed the action without leave to amend because
17 Plaintiff's claims were time barred by a two-year statute of limitations. (Order (Doc. 4) at
18 4.) On October 22, 2024, the Plaintiff filed a Motion for Reconsideration. Such motions
19 must be filed "no later than fourteen (14) days after the date of the filing of the Order that
20 is the subject of the motion." LRCiv. 7.2(g)(2). The Motion for Reconsideration was filed
21 approximately 47 days after the screening Order. In addition to the requested
22 reconsideration being filed beyond 14-days, the motion fails on the merits.

23 Plaintiff asks the Court to reconsider its Order and toll the two-year statute of
24 limitation period because circumstances beyond Plaintiff's control severely limited his
25 ability to file the claims within two years of when they accrued. The claims in his two-
26 count Complaint are as follows:

27 Plaintiff alleges that on May 23, 2019, he was indicted in Pima County
28 Superior Court case number CR 20192245. At the time, he was in federal
custody for a probation violation. Plaintiff was transported to the Pima
County Jail. On July 3, 2019, Plaintiff had an initial appearance during which

1 a \$10,000 bond was imposed. Bond was posted the same day, however
2 Plaintiff was not released due to the federal detainer related to his probation
violation.

3 On January 14, 2020, Plaintiff was released from federal custody. Despite
4 being eligible for release from detention, Plaintiff was detained in the Pima
County Jail from January 14 to 23, 2020. On January 16, 2020, Plaintiff,
5 through a petition filed by his attorney, informed the Pima County Superior
Court of his release from federal custody. Defendants Butler and Brown
6 “either authorized or failed to prevent the unlawful detention.”

7 (Order (Doc. 4) at 2.)

8 In his Motion for Reconsideration. Plaintiff submits that restrictive conditions of
9 Intensive Probation Supervision (IPS), such as his residency in a halfway house and
10 limitations including traveling only to and from work, probation meetings and other pre-
11 approved locations, “left no time to visit the courthouse or legal resources during
12 operational hours.” (Motion (Doc. 6) at 4.) Halfway-house residency imposed additional
13 curfew and responsibility related restrictions, which if violated could have resulted in
14 severe penalties including incarceration. *Id.* at 1, 4-5. Additionally, his ability to access the
15 courthouse and other legal resources was restricted because of the COVID-19 pandemic.
16 *Id.* at 2-3, 5.

17 In § 1983 civil rights actions, federal courts apply “the forum state’s law regarding
18 tolling, including equitable tolling, except to the extent any of these laws is inconsistent
19 with federal law.” *Butler v. Nat’l Cmty. Renaissance of Cal.*, 766 F.3d 1191, 1198 (9th
20 Cir. 2014) (citation omitted).

21 Outside of narrow statutory provisions not applicable in this case, a Plaintiff seeking
22 equitable tolling under Arizona law must “establish extraordinary circumstances” that were
23 “beyond [the plaintiff’s] control” and “made it impossible to file the claims on time.”
24 *McCloud v. Ariz. Dep’t of Pub. Safety*, 170 P.3d 691, 696-97 (Ariz. App. 2007) (finding
25 that equitable tolling could be applied “sparingly” to “certain rare cases,” such as when an
26 attorney has “suffered a significant incapacitating disability”); *see Porter v. Spader*, 239
27 P.3d 743, 747 (Ariz. App. 2010) (a defendant’s affirmative acts of fraud or concealment
28 that mislead a person from recognizing a legal wrong or timely seeking legal redress
warrant equitable tolling); *Kyles v. Contractors/Eng’rs Supply, Inc.*, 949 P.2d 63, 66-67

1 (Ariz. App. 1997) (equitable tolling applied where the Attorney General’s Office mailed
2 the plaintiff a right-to-sue notice with the incorrect filing deadline). The Supreme Court
3 has also found that federal courts “have typically extended equitable relief only sparingly,”
4 such as when a claimant “has actively pursued his judicial remedies by filing a defective
5 pleading during the statutory period, or where the complainant has been induced or tricked
6 by his adversary’s misconduct into allowing the filing deadline to pass.” *Irwin v. Dep’t of*
7 *Veterans Affairs*, 498 U.S. 89, 96 (1990) (“We have generally been much less forgiving in
8 receiving late filings where the claimant failed to exercise due diligence in preserving his
9 legal rights.”).

10 The plaintiff bears the burden to establish equitable tolling by showing diligent
11 pursuit of his rights and the presence of extraordinary circumstances. *McCloud*, 170 P.3d
12 at 694, 696, 698 (holding that the trial court did not abuse its discretion in failing to find
13 extraordinary circumstances that would warrant tolling the limitations period due to the
14 attorney’s surgery the day before the limitations period expired). Extraordinary
15 circumstances must be supported with evidence, not simply with personal conclusions or
16 assertions. *Id.* at 695.

17 Plaintiff makes neither showing and the Motion for Reconsideration fails. Plaintiff
18 fails to describe in any specific way how the COVID-19 prevented him from drafting and
19 filing the Complaint within two-years following his allegedly late release on January 23,
20 2020, from the Pima County Jail. The statute of limitations did not end until January 23,
21 2022, but Plaintiff offers no explanation as to what impediments would have precluded
22 him from drafting and filing the Complaint within this allowed time. There was no
23 investigation required; all the information contained in the Complaint, including the names
24 of the Defendants, was known as of January 23, 2020. While the courthouse may have been
25 closed, the court was available to Plaintiff, like it was available to all others, during the
26 pandemic by mail and drop box. While some services, like in-person hearings, were
27 restricted, the courthouse was not closed during the pandemic, and court services of the
28 type that were restricted were not the type of services need by the Plaintiff to file his

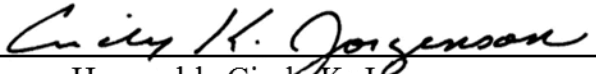
1 Complaint. Plaintiff admits that IPS accommodated travel to “pre-approved locations” and
2 does not say that he was denied permission to travel to any specified location that was
3 necessary to enable him to draft and/or file the Complaint.

4 In short, Plaintiff’s examples of extraordinary circumstances were the very
5 circumstances faced by all persons during the pandemic and faced by all persons who are
6 released from custody on IPS to halfway houses. Especially, considering the Plaintiff had
7 two years, from January 23, 2020, until January 23, 2022, to file the Complaint, he fails to
8 show any circumstances beyond his control that would have made it impossible to draft
9 and file the Complaint within the statutory two-year period. He did not miss the limitation
10 period by a few days or even months. He did not file the Complaint until July 8, 2024,
11 approximately four years after the alleged claims arose. This is not the type of “rare case”
12 for tolling the limitation period. There are neither extraordinary circumstances nor any
13 diligence exhibited by the Plaintiff to preserve his legal rights.

14 **Accordingly,**

15 **IT IS ORDERED** that the Motion for Reconsideration (Doc. 6) is DENIED.

16 Dated this 28th day of January, 2025.

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19 Honorable Cindy K. Jorgenson
20 United States District Judge
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